

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
AT MEMPHIS**

STATE OF TENNESSEE, ex rel )  
WILLIAM L. GIBBONS, District Attorney )  
General for the 30th Judicial District, and )  
PAULA A. FLOWERS, in her official capacity as )  
Commissioner of the Tennessee Department )  
of Commerce and Insurance )

Plaintiffs, )

v. )

No. \_\_\_\_\_

CLAYTON R. SMART; )  
STEPHEN W. SMITH, AND ALL PERSONS )  
ACTING IN CONCERT WITH THEM, )  
INDIAN NATION, LLC; )  
REDBUD TREE INVESTMENTS, LLC; )  
FOREST HILL FUNERAL HOME )  
AND MEMORIAL PARK - EAST, LLC; )  
FOREST HILL FUNERAL HOME )  
AND MEMORIAL PARK - EAST, LLC d/b/a )  
FOREST HILL FUNERAL HOME )  
AND MEMORIAL PARK - MIDTOWN; )  
FOREST HILL FUNERAL HOME )  
AND MEMORIAL PARK - EAST, LLC d/b/a )  
FOREST HILL FUNERAL HOME )  
AND MEMORIAL PARK - SOUTH; )

Defendants. )

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**VERIFIED COMPLAINT**

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**TO THE CHANCELLORS OF THE CHANCERY COURT OF SHELBY  
COUNTY, TENNESSEE:**

Plaintiffs, through counsel, the Attorney General & Reporter of the State of Tennessee and the District Attorney General of the 30th Judicial District, bring suit against the Defendants identified above. For their complaint, Plaintiffs allege as follows:

I.  
NATURE OF THE ACTION

1. Plaintiffs bring this action for injunctive relief and the appointment of a receiver pursuant to the Cemetery Act, Tenn. Code Ann. § § 46-1-101, *et seq.* As more fully alleged herein, such relief is necessary and appropriate because there are substantial deficiencies in the Improvement Care and Merchandise and Services trust funds maintained by defendants. Furthermore, unless defendants are restrained and a receiver is appointed, it is likely that the deficiencies will become greater.

II.  
JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to the Cemetery Act, Tenn. Code Ann. § 46-1-301 (previously Tenn. Code Ann. § 46-1-108); Tenn. Code Ann. § 46-1-309 (previously Tenn. Code Ann. § 46-2-308); Tenn. Code Ann. § 46-1-312 (previously Tenn. Code Ann. § 46-2-312); and Tenn. Code Ann. § 46-1-307 (previously Tenn. Code Ann. § 46-2-407).

3. Venue is proper in Shelby County because the cemeteries are located there. Tenn. Code Ann. § 46-1-309 (previously Tenn. Code Ann § 46-2-308) and Tenn. Code Ann. § 46-1-312 (previously Tenn. Code Ann § 46-2-312); *also*, Tenn. Code Ann. §§ 20-1-103 and 107.

III.  
PARTIES

4. Plaintiff Paula Flowers is the Commissioner of the Tennessee Department of Commerce and Insurance. She is charged with the administration of the Cemetery Act, Tenn. Code Ann. §§ 46-1-101, *et seq.*

5. Plaintiff William L. Gibbons is the District Attorney General for the 30 Judicial District of Tennessee and brings this action pursuant to Tenn. Code Ann. § 46-1-309.

6. Defendant Clayton R. Smart, a citizen and resident of Okmulgee County, Oklahoma is the Chairman of the Board and the principal owner (95%) of Indian Nation, LLC. His business addresses are P.O.Box 99, 1801 North Morton Avenue, Okmulgee, Oklahoma, 74447; and 3143 North 32nd Street, Muskogee, Oklahoma, 74401, and his home addresses are 15730 North 280th Road, Okmulgee, Oklahoma, 74447; and 1801 North Morton Avenue, Okmulgee, Oklahoma, 74447.

7. Defendant Stephen W. Smith, a citizen and resident of Muskogee County, Oklahoma, is a Director and an owner (5%) of Indian Nation, LLC. His business addresses are P.O.Box 777, 115 North 5th, Henryetta, Oklahoma 74437; and 3143 North 32nd Street, Muskogee, Oklahoma, 74401, and his home address is located at 7836 West 16th Street North, Muskogee, Oklahoma, 74401.

8. Defendant Indian Nation, LLC, is a Nevada limited liability company, which has its principal office in Muskogee, Oklahoma. It owns Defendant Forest Hill Funeral Home and Memorial Park - East, LLC. Clayton R. Smart and Stephen W. Smith are owners and shareholders of Indian Nation, LLC. Its registered agent for service of process is Eddie L. Wright at 7016 Feather Pine, Las Vegas, Nevada, 89131.

9. Defendant Redbud Tree Investments, LLC, is a Nevada limited liability company, which has its principal office in Muskogee, Oklahoma. Clayton R. Smart and Stephen W. Smith are owners and shareholders of Redbud Tree Investments, LLC. Its registered agent for service of process is Eddie L. Wright at 7016 Feather Pine, Las Vegas, Nevada, 89131.

10. Defendant Forest Hill Funeral Home and Memorial Park - East, LLC, ("Forest Hill"), a cemetery company incorporated in Tennessee, consists of three separate cemeteries, three funeral homes and three private mausoleums all located in Memphis, Tennessee. The three cemeteries are

Forest Hill Funeral Home and Memorial Park - East, Forest Hill Funeral Home and Memorial Park - Midtown and Forest Hill Funeral Home and Memorial Park - South, located at 2440 Whitten Rd., Memphis, Tennessee 38133, 1661 S Elvis Presley Blvd., Memphis, Tennessee 38106, and 2545 E. Holmes Rd., Memphis, Tennessee 38118, respectively.

#### IV. GENERAL ALLEGATIONS

11. Forest Hill owns and operates three funeral homes and three cemeteries in Memphis. On December 23, 2004, Indian Nation, LLC purchased Forest Hill. Smart and Smith own all of the membership interests in Indian Nation with Smart owning a 95% share and Smith owning the remaining 5%. After the purchase, Smart became Chairman of the Board and Smith became a director.

12. Forest Hill has, for many years, been in the business of selling pre need funeral plans. In addition, Forest Hill has provided cemetery merchandise and services and has provided for the improvement and upkeep of its cemeteries. As required under Tennessee law, it has established trusts to satisfy its obligations under its preneed contracts, cemetery merchandise and services agreements and to provide for the improvement and maintenance of the cemeteries. At the time of its acquisition by Indian Nation, Forest Hill had twelve trusts to meet these obligations. These trusts were funded with approximately \$29,500,000 in assets. Most of the assets in these trusts were life insurance policies that had a face value of \$22,000,000. At that time, Forethought Federal Savings Bank of Batesville, Indiana ("Forethought"), was the Trustee of record.

13. On or about December 2004, Smart removed Forethought as Trustee and appointed Community Trust Investment of Noblesville, Indiana ("Community Trust") as its successor. With

the change of trustee, Mr. Smart converted the trusts from an independent trustee that makes investment decisions to a self-directed trust.

14. After Community Trust replaced Forethought as trustee, Community Trust directed Forethought to cash in 13,465 preneed funeral policies. The cash surrender value on those policies was \$12,255,082.13, resulting in a loss of \$9,547,082 in preneed funeral contracts trust principal. The cashing in of the life insurance policies left the trusts with \$18,424,725 in cash that was transferred from Forethought to Community.

15. Within a short time after Community received the \$18,424,725 from Forethought, Smart directed Community to use \$10,700,000 to purchase a debenture that was issued by Quest Mineral & Exploration, Inc., ("Quest"), a Nevada limited liability company with its principal office in Muskogee, Oklahoma. Smart also directed Community to invest \$6,700,000 in trust funds in topiary funds with Smith Barney or Citigroup.

16. In August 2005, Community Trust resigned as Forest Hill's trustee. In that same month, INA Trust, FSB, a Delaware corporation, ("INA"), was appointed as the successor trustee. At or around the time it became trustee, INA reported that there was \$19,352,922.45 held in total assets for the twelve Forest Hill cemetery trusts. That money included a \$10.9 million Quest debenture and topiary notes valued at \$7,664,304.00.

17. In the late summer of 2006, the Burial Services Division of the Tennessee Department of Commerce and Insurance conducted an examination of Defendant Forest Hill, pursuant to Tenn. Code Ann. § 46-2-205. Substantial deficiencies were found in the improvement care and merchandise and services trust funds of Forest Hill. Those deficiencies arose because Defendants did not deposit the amount of funds required by statute to be deposited at the time cemetery

merchandise and services and burial plots are sold. In fact, Defendants have failed to make any such deposits from November 2004 through June 2006. The combined deficiencies for failure to deposit for the improvement care trust is \$87,476 and the combined deficiencies for the merchandise and services trusts is \$119,572.

18. During the 2006 examination, auditors also discovered that Defendants have failed to maintain proper separate accounting records for each of the twelve trusts. Separate sets of records are required for each trust. Such records must clearly show the assets that are held in each trust and such records must be kept in Tennessee. Defendants have not satisfied any of these requirements.

19. On October 16, 2006, the Commissioner of Commerce & Insurance ordered Forest Hill to cure the deficiencies in the improvement care trust funds and the merchandise and services trust funds be rectified. Such deficiencies were not cured and on December 21, 2006, the Commissioner entered a conditional suspension order pursuant to Tenn. Code Ann. § 46-2-311 (now Tenn. Code Ann. § 46-1-311).

20. During the summer of 2006, First Hope Bank acquired a substantial block of trust business from INA because INA was under a cease & desist order that had been issued by the Office of Thrift Supervision (OTS). Under the terms of the OTS Order, INA was required to comply with the OTS Order or withdraw from the trust business. The twelve Forest Hill trusts were within the block of trust business that was transferred from INA to First Hope.

21. At the time of the transfer, First Hope Bank received approximately \$1.8 million in cash, and an unsigned debenture issued by Quest. These represented the assets for all of the trusts. Based on information provided by INA, the debenture purportedly had a value of approximately \$11,400,000. There was nothing in the documents or other information provided by INA to

indicate how the transferred assets, other than cash, were supposed to be allocated among the twelve Forest Hill trusts. The only information concerning the allocation of such assets was in the form of spreadsheets provided by an agent of Mr. Smart, George Upchurch. The validity of that information has not been independently verified.

22. On November 17, 2006, Smart executed trust documents with First Hope Bank. On November 20, 2006, Smart requested in writing and by telephone that First Hope Bank transfer \$836,265.66 from the \$1,800,000 cash that was held in the Forest Hill trusts. Mr. Smart represented that the \$836,265.66 distribution could be made as a distribution of income from the trust but was unable to provide evidence that the \$836,265.66 was, in fact, trust income. First Hope Bank declined Smart's request to make the distribution.

23. Since November 2006, Smart and, or his attorney, Cannon Allen, have continued to make demands for the \$800,000 distribution. On one occasion, Smart represented that the State of Tennessee had ordered Forest Hill to make the distribution. Such representation is, in fact, untrue. The State of Tennessee has not issued such an order. On another occasion, Mr. Allen stated that Mr. Smart needed the distribution because the money was the life blood of the Forest Hills cemetery and without it they could not continue to operate the cemetery. First Hope Bank has declined all of these requests and demands.

24. As of early January of 2007, First Hope has reported that the only assets that have been transferred in trust, are approximately 1.8 million dollars and the Quest debenture. According to records supplied by INA, the value of the Quest debenture is represented to be \$11,400,000. In fact, the Quest debenture has little or no market value. As of the end of 2004, it had a negative net worth and a net operating loss for the year. In addition, the fair market value of its mineral leases is, at

most, \$106,000. In addition, contrary to Smart's representations, Smart is, in fact, the owner of Quest and the person who is in control of its assets and operations.

25. From the time Smart and Indian Nation acquired Forest Hill through December 31, 2006, the value of the assets in the twelve Forest Hill trusts have declined from approximately \$29,000,000 to approximately \$9,000,000. As of December 31, 2006, those assets consisted of \$5,600,000 in topiary funds at Smith Barney; \$1,670,000 in funds on deposit at Forethought; \$1,800,000 in cash on deposit at First Hope; and the Quest debenture which has no market value. It is unclear how these assets are allocated among the twelve trusts because of the failure of Smart and Forest Hill to maintain proper records.

26. On December 31, 2006, Smart instructed Citigroup/ Smith Barney to begin the process of redeeming the \$5,600,000 in topiary funds that belong to the trusts. At the present time, First Hope, the trustee of record does not have legal title to or control over the \$5,600,000 in topiary funds.

## V.

### CAUSES OF ACTION

#### COUNT I

#### GENERAL CEMETERY ACT OF 1968 - IMPROVEMENT CARE TRUST FUNDS<sup>1</sup>

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<sup>1</sup> The General Cemetery Act of 1968 and the Cemetery Merchandise and Services Act of 1979 were respectively codified at Tenn. Code Ann. §§ 46-1-101 through 46-1-313 and Tenn. Code Ann. § 46-4-101 through 46-4-411 and were in effect through December 31, 2006. By Public Act, Ch. 1012, the General Assembly amended chapters 1-4 of Title 46 by deleting them in their entirety and substituting the "Cemetery Act of 2006," which became effective on January 1, 2007.

Most of the former statutory provisions bearing on this action are identical or nearly identical to the provisions of the new Act. The instant Complaint alleges that a substantial deficiency exists in the improvement care trust funds and the merchandise and services trust funds of the Forest Hill cemeteries and that the appointment of a receiver is necessary in order to eliminate such deficiency. In the event that such deficiency in the trust funds cannot be corrected through a receivership, the Plaintiffs seek an order from this Court directing the sale of the cemetery company assets. The former statutory cites and their corresponding new statutory cites are stated throughout the Complaint, with any differences between the former and new



27. Plaintiffs incorporate all of the allegations set forth in Paragraphs 1 through 26 and incorporate them herein by reference.

28. Tenn. Code Ann. § 46-2-302 requires a cemetery company to establish and maintain an improvement care trust to provide for the perpetual improvement, care, and maintenance of the cemetery. Under the statute, such trust funds must be established for each separate cemetery and for each separate geographical location of each cemetery owned and operated by the cemetery company to provide for the improvement care and maintenance of such cemetery or such separate geographical location. Each such trust fund must be established pursuant to a written trust agreement with a trust company, or with a state or national bank, or with savings and loan associations having insurance of accounts as required by law. [Present Tenn. Code Ann. § 46-1-204(a) provides the same.]

29. Subsection (b) of the statute further provides that as each mausoleum, crypt or niche is sold, a specified minimum portion of the total sales price is to be deposited in the appropriate improvement care trust fund and that the full amount of any funds paid to a cemetery company for special care must be deposited into the improvement care trust fund. [Present Tenn. Code Ann. § 46-1-204(b) provides the same.]

30. Subsection (d) of this statute requires that such setting aside and depositing of funds into the improvement care trust fund shall be made by the cemetery company "not later than thirty (30) days after the close of the month in which the final payment on the purchase price . . . is received." These funds are to be held by the trustee in trust and perpetuity for the specific purposes stated in the written agreement. All deposits with a trustee by a cemetery company are to be in cash only.

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statutory provisions being noted. For the convenience of the Court and the parties, former Chapters 1-4 of Title 46 are attached hereto as Exhibit "A."

[Present Tenn. Code Ann. § 46-1-204(d) provides the same.]

31. Pursuant to subsection (e), the net earnings of an improvement care trust fund shall be paid to and be used and expended by the owners or officers and directors of the cemetery company for the improvement care of the cemetery or separate geographical location of the cemetery for which the fund was established and for no other purpose. [Present Tenn. Code Ann. § 46-1-204(e) provides the same.]

32. Finally, subsection (f) provides that no cemetery company shall commingle the improvement care funds for the benefit of one cemetery with the improvement care funds for the benefit of another cemetery or separate geographical location of a cemetery, or with any other funds; and subsection (g) provides that the improvement care trust fund is not a part of the assets of any cemetery company. [Present Tenn. Code Ann. § 46-1-204(f) and (g) provide the same.]

33. The State is authorized, pursuant to Tenn. Code Ann. § 46-2-308, to bring an action to revoke the charter or certificate of authority of a corporate cemetery company that fails to comply with the provisions of Tenn. Code Ann. § 46-2-302. The court may order the seizure and sale of the cemetery company's assets to the extent necessary to set up the improvement care trust fund. Furthermore, if the Court revokes the charter or certificate of authority, it may order the sale of the whole company property and may award reasonable attorney's fees for the attorney representing the state in such a proceeding. [Present Tenn. Code Ann. § 46-1-309 provides the same.]

34. Pursuant to Tenn. Code Ann. § 46-2-311, the Commissioner is authorized, upon determining that a substantial deficiency exists in the improvement care trust fund to order the correction of such deficiency. The Commissioner may further order the conditional suspension of the certificate of registration of a cemetery company that fails to correct a deficiency. [Present Tenn.

Code Ann. § 46-1-302 provides the same, except it only requires a determination of "a deficiency."]

35. Finally, Tenn. Code Ann. § 46-2-312, provides that:

(a) The chancery court, upon the petition of the commissioner, . . . may, upon determining that a substantial deficiency exists in the improvement care trust fund of any cemetery or separate geographical site of a cemetery within the county, after proper notice to the cemetery owner or operator and all other appropriate parties, and after a hearing thereon, and if the owner or operator of each cemetery or separate geographical location is not operating in compliance with the terms and conditions of an order of the commissioner then in force and effect, proceed to make final the suspension of the registration certificate, and appoint a receiver to take charge of, control and manage the cemetery, or separate geographical site of a cemetery, until the deficiency has been eliminated.

\* \* \*

(d) Should it appear to the court that it is impossible to correct the deficiency in the improvement care trust fund, the court may proceed to order the sale of the cemetery as provided in § 46-2-308, or may otherwise order the termination of the use of the land as a cemetery as provided by law.

[Present Tenn. Code Ann. § 46-1-312 provides the same, except it only requires a determination of "a deficiency."]

36. At the time Indian Nation acquired Forest Hill, Forest Hill's twelve trusts had total assets of approximately \$29,500,000. In late summer of 2006, the Department's examination of Forest Hill revealed that the defendants had failed to maintain proper separate accounting records for each of the twelve trusts. The examination also showed that defendants had failed to make deposits from November 2004 through June 2006. Moreover, the examination revealed substantial deficiencies in the trust funds. Currently, the twelve Forest Hill trust funds only hold \$5,600,000 in topiary funds at Citigroup/ Smith Barney; \$1,670,000 in funds on deposit at Forethought; \$1,800,000 in cash on deposit at First Hope; and the Quest debenture that has negligible value.

37. As a result of the defendants' failure to make required deposits and defendant Clayton Smart's self dealing, misappropriation and/ or diversion of the trusts' assets, a substantial deficiency

exists in Forest Hill's improvement care trust funds.

## COUNT II

### PERSONAL LIABILITY OF SMART AND SMITH FOR THE SUBSTANTIAL DEFICIENCIES IN THE TRUSTS

38. Plaintiffs incorporate all of the allegations set forth in Paragraphs 1 through 26 and incorporate them herein by reference.

39. Tenn. Code Ann. § 46-2-309 specifically authorizes the State of Tennessee to "recover from the officers and directors of the company, at any time, for the use of the company, an amount sufficient to bring the improvement care trust fund up to the twenty percent (20%) required, together with reasonable attorney's fees for the attorney handling such suit . . ." [Present Tenn. Code Ann. § 46-1-310 provides the same, except it substitutes "the amount required" for "up to the twenty percent (20%) required."]

40. As alleged in Paragraph 37, a substantial deficiency exists in the Forest Hill improvement care trust funds. Under Tenn. Code Ann. § 46-2-309, the State is authorized to recover from defendants Clayton Smart and Stephen Smith, officers of Forest Hill, an amount sufficient to bring the improvement care trust fund up to the twenty percent (20%) required, together with reasonable attorney's fees.

## COUNT III

### VIOLATIONS OF CEMETERY MERCHANDISE AND SERVICES ACT OF 1979

41. Plaintiffs incorporate all of the allegations set forth in Paragraphs 1 through 26 and incorporate them herein by reference.

42. Tenn. Code Ann. § 46-2-403(b)(2) requires that if a cemetery enters into any pre-need

contracts, a separate general trust account be established and maintained for each cemetery owned or operated by a cemetery company, known as the "pre-need trust account." [Present Tenn. Code Ann. § 46-1-207 provides the same, except it changes the nomenclature of the account to "preneed merchandise and services trust account."] A "pre-need" contract is a contract for the sale of merchandise or services to be used in connection with the interment or commemoration of a deceased human being, where delivery of such merchandise or performance of such services is to be made more than sixty (60) days after the receipt of any payment under the contract. *See* Tenn. Code Ann. § 46-2-402(a). [Present Tenn. Code Ann. § 46-1-206(a) provides the same.]

43. Tenn. Code Ann. § 46-2-403(b)(1) requires that a cemetery, within sixty days of receipt of any consideration paid pursuant to a pre-need contract, deposit "an amount equal to the procurement costs of the merchandise and services identified in the sales contract, plus twenty percent (20%) of such costs" in the Merchandise and Services Trust Fund. [Present Tenn. Code Ann. § 46-1-207(b)(1) provides the same.]

44. Tenn. Code Ann. § 46-2-404 provides that these trust funds, including the income therefrom, shall remain intact until the merchandise is delivered or the services performed as specified in the sales contract. Upon complete performance of the services or delivery of the merchandise, the seller shall certify the same to the trustee by affidavit, and the amount of specific funds in the trust account identified to the delivered merchandise or the performed services, may then be paid to the seller. [Present Tenn. Code Ann. § 46-1-208 provides the same.]

45. Finally, Tenn. Code Ann. § 46-2-407 provides that

[T]he commissioner may, upon determining that a substantial deficiency . . . exists in any trust account required under this part, order the liquidation of such deficiency upon such terms and conditions as the commissioner may determine to be

appropriate. If the deficiency has not been liquidated as ordered, the commissioner may bring an action in chancery court to recover the amount of the trust deficiency. Upon finding that a substantial deficiency exists, the court may appoint a receiver to operate the cemetery or, if necessary, order the seizure and sale of the assets of the cemetery company, to the end that the trust be made whole. The court may also award reasonable attorney's fees for the attorney representing the commissioner in an action brought under this section . . .

[Present Tenn. Code Ann. § 46-1-307 provides the same, except it only requires a determination of "a deficiency."]

46. At the time Indian Nation acquired Forest Hill, Forest Hill's twelve trusts had total assets of approximately \$29,500,000. In late summer of 2006, the Department's examination of Forest Hill revealed that the defendants had failed to maintain proper separate accounting records for each of the twelve trusts. The examination also showed that defendants had failed to make deposits from November 2004 through June 2006. Moreover, the examination revealed substantial deficiencies in the trust funds. Currently, the twelve Forest Hill trust funds only hold \$5,600,000 in topiary funds at Citigroup/ Smith Barney; \$1,670,000 in funds on deposit at Forethought; \$1,800,000 in cash on deposit at First Hope; and the Quest debenture that has negligible value.

47. As a result of the defendants' failure to make required deposits and defendant Clayton Smart's self dealing, misappropriation and/ or diversion of the trusts' assets, a substantial deficiency exists in the Forest Hill's merchandise and services trust funds.

## VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. That this complaint be filed without cost bond as provided in Tenn. Code Ann. §§ 20-13-101 and 46-1-301 and that process issue and be served upon the Defendants requiring them

to appear and to answer this complaint;

2. That this Court, pursuant to former Tenn. Code Ann. § 46-1-108, present Tenn. Code Ann. § 46-1-301 , restrain and temporarily and permanently enjoin all further business activities by Defendants in contravention of state law as described in this complaint;

3. That this Court restrain and temporarily and permanently enjoin all persons, including Defendants, from disposing of, transferring, relocating, dissipating or otherwise altering the status of any of their assets, books, and records or assets, or books and records controlled by Defendants, wherever located, without prior approval of this Court, pursuant to former Tenn. § 46-1-108, present Tenn. Code Ann. § 46-1-301;

4. That this Court issue an order to show cause why the certificate of registration of Forest Hill should not be suspended and a receiver should not be appointed to take charge of, control and manage Forest Hill for purposes of eliminating the deficiency in the Improvement Care and Merchandise and Services Trust Funds, pursuant to former Tenn. Code Ann. §§ 46-2-312, present Tenn. Code Ann. § 46-1-312 and former Tenn. Code Ann. § 46-2-407, present Tenn. Code Ann. § 46-1-307;

5. That in the event this Court determines that it is impossible to correct the deficiency in the Improvement Care and Merchandise and Services Trust Funds through a receivership, that this Court issue an order to show cause why the charter of Forest Hill should not be judicially revoked and the property of the company sold, pursuant to former Tenn. Code Ann. § 46-2-308, present Tenn. Code Ann. § 46-1-309; former Tenn. Code Ann. § 46-2-312(d), present Tenn. Code Ann. § 46-1-312(d) and former Tenn. Code Ann. § 46-2-407, present Tenn. Code Ann. § 46-1-307;

6. That the defendant officers of Forest Hill, Clayton R. Smart and Stephen W. Smith,

be adjudged jointly and severally liable for an amount sufficient to bring the Improvement Care Trust Fund up to the twenty percent (20%) required by law as established by the most recent examination of Forest Hill, pursuant to Tenn. Code Ann. § 46-2-309(b). [Present Tenn. Code Ann. § 46-1-310 provides the same, except it states "the amount required, instead of "the 20% required."];

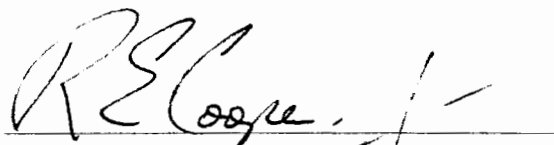
7. That all persons, corporations or associations within the jurisdiction of this Court be enjoined from commencing or further prosecuting any action at law or in equity or other proceeding against the defendant Company;

8. That the State be awarded its reasonable attorney's fees pursuant to former Tenn. Code Ann. § 46-2-308, present Tenn. Code Ann. § 46-1-309; former Tenn. Code Ann. § 46-2-309, present Tenn. Code Ann. § 46-1-310; and former Tenn. Code Ann. § 46-2-407, present Tenn. Code Ann. § 46-1-307;

9. That all costs in this cause be taxed against Defendants, for which execution may issue if necessary;

10. For such other and further relief to which the Plaintiff may be entitled.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "R E Cooper, Jr.", is written over a horizontal line.

ROBERT E. COOPER, JR. (BPR 10934)  
Attorney General and Reporter  
Tennessee Attorney General's Office  
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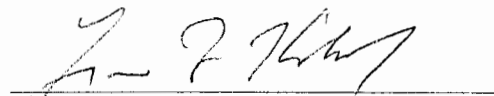
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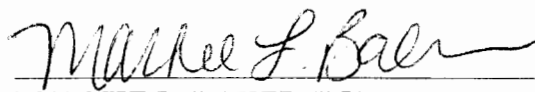
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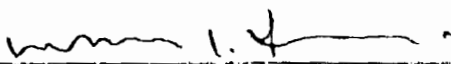
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FOREST HILL FUNERAL HOME  
AND MEMORIAL PARK - SOUTH;

Defendants.

I, PAULA A. FLOWERS, being first duly sworn, hereby state as follows:

I am the duly appointed Commissioner of the Tennessee Department of Commerce and Insurance and in that capacity I am the person ultimately responsible for the enforcement of the Cemetery Act, as amended, codified at Tenn. Code Ann. §§46-1-101, *et seq.* The performance of these duties has been delegated to my duly authorized representative, Robert Gribble, the Executive Director of the Funeral Board and Burial Services section of the Tennessee Department of Commerce and Insurance, and personnel employed by his section. I have reviewed the complaint in this cause and know the contents thereof and hereby verify that the same is true in substance and fact.

Paula A. Flowers  
PAULA A. FLOWERS

Sworn to and subscribed before me this 8<sup>th</sup> day of January, 2007.

Denise M. Lewis  
Notary Public  
My Commission Expires: 3/20/08

